



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

IN THE MATTER OF CLAIM AGAINST THE
DEALER BOND OF MIDWEST AUTO, INC.

Case No. TR-01-0017

FINAL DECISION

Ms. Michelle A. Thomas filed a claim on or about January 16, 2001, with the Wisconsin Department of Transportation (the "Department") against the motor vehicle dealer bond of Midwest Auto, Inc. (the "Dealer"). On April 4, 2001, the claim, along with the documents gathered by the Department in its investigation, was referred to the Division of Hearings and Appeals for hearing. The undersigned initially gave the parties until June 4, 2001 to file any additional information they wished to have considered in issuing a preliminary determination. The letter sent to the Dealer's address at 7808 W. Congress Street in Milwaukee, however, was returned to the undersigned as not deliverable. The undersigned then re-transmitted the material to the Dealer by letter addressed to 6973 W. Fond du Lac Avenue in Milwaukee. This letter was also returned as undeliverable. The material was then re-sent to the former operator of the Dealer, Mr. Stephen Dinkel, at 8009 W. Appleton Avenue in Milwaukee, by letter dated June 5, 2001. This letter was not returned and is presumed to have been delivered as addressed. The letter of June 5, 2001 allowed the parties until June 29, 2001 to file any additional information. None of the parties submitted any additional information.

On July 26, 2001, the undersigned issued a Preliminary Determination and informed the parties by letter addressed as shown below that if no timely objection to the Preliminary Determination were received by August 27, 2001, then the Preliminary Determination would be subject to adoption as the Final Decision in the matter. The undersigned has not received any objections to the Preliminary Determination. Accordingly, the Preliminary Determination is adopted as the final decision of the Department of Transportation pursuant to Wis. Adm. Code § Trans 140.26(5)(d).

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the parties to this proceeding are certified as follows:

Ms. Michelle A. Thomas
2920 N. 1st Street
Milwaukee, Wisconsin 53212

Washington International Insurance Company
300 Park Blvd., Suite 500
Itasca, Illinois 60143-2625

Midwest Auto, Inc., by
Mr. Stephen Dinkel
8009 W. Appleton Avenue
Milwaukee, Wisconsin 53218

FINDINGS OF FACT

1. Midwest Auto, Inc. (the "Dealer") is a motor vehicle dealer that was licensed by the Department pursuant to Wis. Stat. § 218.0111 (1999-2000) from at least October 10, 1996 to October 10, 2000. The Dealer's facilities were located at 7808 West Congress Street in Milwaukee, Wisconsin. The Dealer is no longer operating.
2. From October 10, 1996 to October 10, 2000, the Dealer had a surety bond in force that had been issued by Washington International Insurance Company, bond number S-200-9138-106.
3. On March 13, 2000, Ms. Michelle Thomas purchased a 1985 Buick Riviera, VIN 1G4EZ57Y5FE441036 (the "Vehicle"), from the Dealer for a full purchase price of \$1,613.20. On the same day, the Dealer prepared a Form MV11, "Wisconsin Title & Application", to transfer to the Vehicle a license plate that had been previously issued to Ms. Thomas.
4. The Dealer failed to forward the Form MV11 to the Department within seven business days as required by Wis. Stat. § 342.16(1)(a). The form was not forwarded to the Department until November 2000.
5. The Vehicle was stolen on September 28, 2000. Ms. Thomas duly reported the theft to the Milwaukee Police Department. She then learned from the police that according to Department records she was not the record owner of the Vehicle, but rather that a person in Sheboygan was.
6. The Vehicle was recovered and impounded by the City of Milwaukee. For reasons that are not apparent from the information provided, on October 18, 2000 the City "recycled" the Vehicle, thereby destroying it.
7. On or about October 19, 2000, Ms. Thomas filed a Dealer Complaint with the Department. On or about January 16, 2001, she filed claim against the Dealer's bond, requesting compensation of \$1,600.00.
8. If the Dealer had forwarded the Form MV11 to the Department within seven business days of March 13, 2000, then Ms. Thomas would have been duly reflected as the record owner of the Vehicle when it was stolen on September 28, 2000. If Ms. Thomas had been duly reflected

as the record owner on September 28, 2000, the City of Milwaukee would have allowed her to recover the Vehicle, and the City would not have been destroyed it on October 18, 2000.

9. Ms. Thomas suffered an actual loss in the amount claimed of \$1,600.00 as a result of the Dealer's failure to forward the Form MV11 to the Department. This sum fairly represents the Vehicle's replacement value when it was destroyed.
10. Ms. Thomas's bond claim was filed within three years of the ending date of the period the Washington International Insurance Company bond was in effect.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth in the Wisconsin Administrative Code at Chapter Trans 140, Subchapter II. Section Trans 140.21(1) provides in relevant part as follows:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a)1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)*].

* * * *

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow a claim, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed.

Wisconsin Admin. Code § Trans 140.21(1)(c)1 provides that a violation of Wis. Stat. § 218.0116(1)(gm) will support a claim against a dealer bond. Section 218.0116(1)(gm) provides as follows:

(1) A license may be denied, suspended or revoked on the following grounds: ...

(gm) Having violated any law relating to the sale, lease, distribution or financing of motor vehicles.

Wis. Stat. § 342.16(1)(a) is a statute respecting the sale of motor vehicles. It requires a dealer to “mail or deliver” an application for certificate of title within seven business days following the sale of a used vehicle. The Dealer’s failure to do so constitutes a violation of a law relating to the sale of a motor vehicle, and constitutes an act for which a motor vehicle dealer license may be suspended or revoked under Wis. Stat. § 218.0116(1)(gm). The violation thus supports a claim against a dealer bond under Wis. Admin. Code § Trans 140.21(1)(c)1.

The violation caused an actual loss to Ms. Thomas. If the Dealer had timely forwarded the Form MV11, then the Department would have transferred record title to her well before the theft of the Vehicle in September 2000. If Ms. Thomas had held record title to the Vehicle when it was stolen, then the City of Milwaukee would not have destroyed the Vehicle. Instead, the City would have allowed Ms. Thomas to recover it.

Ms. Thomas’ actual loss is \$1,600 as claimed. There is no information presented that the 1985 model year vehicle purchased for \$1,613.20 in March 2000 would have depreciated further to an appreciable extent in the some six months between its sale and theft. Accordingly, the amount claimed fairly represents the Vehicle’s replacement cost and thus Ms. Thomas’ actual loss.

CONCLUSIONS OF LAW

1. Ms. Michelle Thomas’ claim arose on or about March 23, 2000, which was the eighth business day following her purchase of the Vehicle on March 13, 2000. The surety bond issued to the Dealer by Washington International Insurance Company was in effect at this time. The claim arose during the period covered by the surety bond.
2. Ms. Thomas filed a claim against the motor vehicle dealer bond of the Dealer on or about January 16, 2001. The bond claim was filed within three years of the last day of the period covered by the surety bond. The claim is timely filed pursuant to Wis. Adm. Code § Trans 140.21(1)(d).
3. The Dealer violated Wis. Stat. § 342.16(1)(a) by submitting the Form MV11 to the Department in November 2000, well beyond the seven business day period imposed by the statute. This is an act for which a motor vehicle dealer license may be suspended or revoked under Wis. Stat. § 218.0116(1)(gm), and supports a claim against a dealer bond under Wis. Admin. Code § Trans 140.21(1)(c)1.
4. Ms. Thomas suffered an actual loss of \$1,600.00 that was caused an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. This is the amount that would be necessary for Ms. Thomas to replace the Vehicle.
5. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Ms. Michelle Thomas against the motor vehicle dealer bond of Midwest Motors, Inc. in the amount of \$1,600.00 is ALLOWED.

Dated at Milwaukee, Wisconsin on August 28, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
819 N. 6th Street, Room 92
Milwaukee, Wisconsin 53203-1685
Telephone: (414) 227-1860
FAX: (414) 227-3818

By: _____
William S. Coleman, Jr.
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.